No. 79

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, PETITIONER

v.

THE F. & M. SCHAEFER BREWING CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
JOHN N. STULL,
Acting Assistant Attorney General,
LEONARD B. SAND,
Assistant to the Solicitor General,
I. HENRY KUTZ,
KARL SCHMEIDLER,
Attorneys,
Department of Justice, Washington 25, D. C.

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REPLY BRIEF FOR THE UNITED STATES

Taxpayer urges (Br. p. 11) that: "Far from being desirable in a money case, a formal judgment serves no purpose and can only lead to useless delay." If taxpayer means to imply that the effect of the decision below is to eliminate entirely the use of formal judgments and to have the opinion serve, for all purposes, both as a decision and a judgment, we submit that taxpayer is mistaken. An analysis of the purposes served by a formal judgment and of the practices of the Eastern and Southern Districts of New York demonstrates that formal judgments will still be needed and used, even in "money" cases. The consequences of adherence to the decision below would frequently be, not to eliminate a formal judgment,

but rather to require two judgments having different dates and serving different purposes. As we shall show, in the Eastern and Southern Districts of New York, attempts to comply with the decision below have resulted in confusion and duplication of effort because of the existence of two documents each purporting for some purposes to be "the judgment." Nothing in the Federal Rules of Civil Procedure suggests that there shall be more than one judgment and the disadvantages of having two judgments far outweighs any supposed advantage in expediting appeals. Moreover, as we show in our principal brief (pp. 28–30), a procedure which would, contrary to the decision below, measure the time for appeal from the entry of a formal judgment, as the rule rather than the exception, need not result in unnecessary delays.

1. A FORMAL JUDGMENT IS OFTEN NEEDED TO OBTAIN PAYMENT OR EXECUTION

The facts of the instant case themselves furnish a compelling example of the need for a *judgment*, which is preferably a document separate and distinct from the opinion, but which is, in any event, an explicit and recognizable statement of "who is to pay what to whom."

In this case, the opinion of the district court indicated the amount sought in the complaint,[1] but did

[1] The opinion did not state the date on which taxpayer paid the taxes, refund of which was sought in the complaint. It would not, therefore, have been possible to compute the amount of interest due the taxpayer under Section 6611 of the Internal Revenue Code of 1954, 26 U. S. C., Supp. IV, 6611, without going outside the opinion.

not contain a specific direction that the opinion be entered as a judgment. In the Eastern District of New York, an opinion has been regarded as the "judgment" only where the opinion is rendered on a motion,[2] the relief sought is for money only, the opinion states the amount of the judgment, and the opinion specifically directs that it be entered as the judgment. Therefore, pursuant to the practices of the Clerk's office of the Eastern District of New York, this opinion was not regarded as the judgment but was entered in the civil docket as a "decision rendered." (R. 2.)[3]

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[2] In non-jury trials it is the practice in the Eastern District of New York to file a formal judgment in every case. Presumably, this is not always done where the case is disposed of by motion or order because of local Rule 10 (a). See our principal brief, pp. 26–27, fn. 6.

As to local Rule 10 (a), the Second Circuit has recognized that it merely "supplement[s]" (*United States* v. *Wissahickon Tool Works*, 200 F. 2d 936, 938), or is "corroborative of the practice actually required by F. R. 58": *Matteson* v. *United States*, 240 F. 2d 517, 518. Moreover, even if there were a conflict in practical operation between local Rule 10 (a) and the Federal Rule, obviously the former must yield if uniformity within the federal judicature is to be attained. See F. R. 83; cf. *Commissioner* v. *Estate of Bedford*, 325 U. S. 283, 288. Since Rule 10 (a) does not prevent the district judge from making an order in more extended form than in the memorandum of the determination of the motion, we do not believe the local rule conflicts with F. R. 58, especially where, as here, the district judge in fact signs a formal order.

[3] In recognition of this, taxpayer states (Br. p. 1) that the question presented is "Whether the time for appeal * * * runs from the date of filing and docketing of a *decision* of the United States District Court * * *." (Emphasis added.)

When, on May 24, 1955, the district judge signed the formal order submitted by taxpayer,[4] this document was stamped "Judgment Rendered" and the appropriate entry was made in the civil docket, pursuant to the local practice. (R. 2.) Also pursuant to the local practice, only after this was done was an entry made in the "Judgment Docket" (see F. R. C. P. 79 (c)) which lists, under the name of the judgment debtor, the date of the judgment, the amount of the judgment, the name of the creditor, and the date of payment or satisfaction. May 24, 1955, was the first occasion upon which any interested person could ascertain from the judgment docket of the Eastern District of New York that there was a judgment in this litigation.

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[4] Under local Rule 13, the formal judgment could be submitted to the district judge only on notice to the adverse party, here the United States. If the district judge had refused to sign the order because he construed his prior opinion as a judgment finally disposing of the case, the United States could then have filed a timely notice of appeal from the opinion since the sixty day period had not yet expired. Thus, the court below held that the Government was precluded from appellate review on the merits because it construed the original opinion in precisely the same manner as did the taxpayer, the district judge who wrote the opinion, and the district court clerks who made the docket entries.

[5] A certified copy of the judgment docket entry of May 24, 1955, has been filed with the Clerk of the Court. See Appendix A, *infra*, p. 10.

In an affidavit dated December 9, 1957, also filed with the Clerk of this Court, Karl Schneidler, Attorney, Department of Justice, states that he has searched the judgment docket of the Eastern District of New York and that the May 24, 1955, entry is the earliest and only entry found for this case in that docket. See Appendix B, *infra*, p. 11.

Taxpayer's contention (Br. pp. 15-16), that the civil docket entry of April 11th enabled any "third person interested in the

To secure payment from the United States taxpayer would have had to submit a certified copy of the judgment which contained the precise amount of the recovery.[*] And, even as to private litigants, a judgment clearly recognizable as such and entered in the judgment docket is necessary in the Eastern and Southern Districts of New York to secure either a writ of execution of the judgment, a certified copy of the judgment, or a transcript of the judgment. These documents are needed where a judgment is to be recorded or registered elsewhere. See principal

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outcome" to ascertain the truth. Aside from the fact that no entry is, or was, made in the "Judgment Docket" until a document is signed which is said to be the judgment and which is officially part of the judgment.

[*] By letter dated December 6, 1957, the Chief Counsel, Internal Revenue Service, has informed us that the practice followed by the Treasury Department with respect to refund payments is as follows:

"As you know, prior to Treasury Decision 6219, C.B. 1956-2, p. 1371, Sections 29.1(a)(2) 5, 6, 7 of Regulations on Procedure and Administration required that claim for refund together with certain supporting documents, including a certified copy of the judgment, be filed with the Commissioner. Strict compliance with these regulations was required and no refunds were made without such compliance.

"As a consequence of Treasury Decision 6219 and in order to facilitate the payment of judgments, practically the same procedure, eliminating only the necessity for filing the claim for refund but requiring the supporting documents, including a certified copy of the judgment, has been adopted.

"Under the old procedure requiring the claim for refund, as well as under the present procedure, it has been the consistent policy of the Internal Revenue Service not to make any refund under any court order or decision unless pursuant to a judgment, order or other document, issued by or under the authority of the court, specifically setting forth the amount of the recovery, interest, costs, etc."

brief, pp. 34–35. Thus, far from serving "no purpose," the formal judgment often serves the only purpose for which the suit was brought—*i. e.*, it enables the successful litigant to obtain his money.

2. THE DECISION BELOW LEADS TO UNCERTAINTY RESULTING FROM "TWO JUDGMENTS"

Taxpayer states (Br. p. 11) that, "Whichever way this case is decided, the decision of this Court will eliminate confusion as to the correct rule." However, we submit that it is important, not merely that this case be decided, but that it be decided in a manner which will encourage certainty and dispatch, and that these objectives would best be served by reversing the decision below.

We respectfully suggest that the court below has attributed the practice of submitting formal judgments to an automatic adherence to state practice (*Matteson* v. *United States*, 240 F. 2d 517, 519), without sufficiently recognizing that a genuine need for a document serving the purposes of a formal judgment may underly that state practice. The Second Circuit also disparages the practice of district judges signing formal judgments, "the later form from which all the confusion arises" (*ibid.* at 518). But, as we have shown in Point I, *supra*, documents containing the elements of a formal judgment are needed for many purposes by the successful litigant. If the district judge refuses to sign a formal order and his initial opinion lacks the clarity or information sufficient for it to serve as a satisfactory judgment, the litigant will encounter difficulties in securing execution and recordation, and may have to resort to further litigation.

(For example, he may have to move to have judgment docketed for a specific sum or to have a formal judgment signed and entered.) In our view, the necessary consequence of the decision below will be that, in many cases, as in the instant case, there will ultimately be two documents said to be judgments. The first "judgment" will be the opinion, the entry of which measures the time to appeal. The second "judgment" will be the formal judgment, signed and docketed either for the purposes shown in Point I, *supra*, or because of uncertainty as to the judgment-status of the opinion itself.

But the existence of two "judgments," bearing different dates and serving different purposes, a concept entirely unrecognized by the Federal Rules of Civil Procedure, has (among others) the following unfortunate consequences:

(*a*) two notices of appeal may be filed (see our principal brief, p. 34), creating confusion as to which judgment is, in fact, being appealed and the date on which the record is due to be docketed in the Court of Appeals under F. R. C. P. 73 (g).

(*b*) the time to appeal may begin to run before the parties are in a position to evaluate with certainty the real consequences of the decision (see our principal brief, pp. 32–33). For example, in a tax case, the decision of the district judge may establish that a certain disputed transaction is to be treated as a sale rather than a gift. This determination may require a reconstruction of the taxpayer's tax liability for the year in which the transaction took place and, because of carry-overs and carry-backs, for other years as

well.[7] Computation of the amount of the judgment may involve matters concerning which the district judge is not then aware. (Nor is there any need for the court or the clerks to concern themselves with such matters; they may well be left for resolution by the parties within time limits set by the court.) But if the district judge's opinion uses "judgment" language, there is a real danger that the Court of Appeals will accord to it the status of a judgment, despite the fact that the judge later signs a formal judgment. The time to appeal may therefore expire before the economic consequences of the judgment can be fairly evaluated.

(*c*) a document which will be treated as a "judgment" in the federal courts may exist, but a creditor or other interested third party, whose only feasible reference source is the judgment docket, will be unable to locate the "judgment". See p. 4, *supra*.

In summary, we submit that considerable uncertainty is injected by the decision below into this area of the law where certainty is of extreme importance to the rights of the litigants. See, *e. g.*, *Edwards* v. *Doctors Hospital*, Case III, 242 F. 2d 888, 891–892, in which only by a study of the trial transcript could it be ascertained that the "decision" was not the "judgment."

CONCLUSION

For the reasons given above and in our principal brief, the judgment of the court below should be re-

[7] It is for this reason that a refund will not be made to a taxpayer unless the exact amount of the recovery is set forth in the certified copy of the judgment. See p. 5, *supra*, fn. 6.

versed and the case remanded with directions that the motion to dismiss the Government's appeal be denied and that the court below proceed to consider the appeal on the merits.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.
JOHN N. STULL,
Acting Assistant Attorney General.
LEONARD B. SAND,
Assistant to the Solicitor General.
I. HENRY KUTZ,
KARL SCHMEIDLER,
Attorneys.

DECEMBER 1957.

APPENDIX A

Certified Copy of the Judgment

Names of parties against whom judgments have been obtained	Names of parties in whose favor judgments have been obtained
United States of America	The F & M Schaefer Brewing Co.

Civ. 14715

Amount of Judgment	Names of Attorneys	When Docketed
$7,769.37		May 24, 1955
$7,769.37		

United States of America

Clerk's Office

U. S. District Court for the
Eastern District of New York, *ss.:*

I CERTIFY, That the foregoing is a correct Transcript from the Docket of JUDGMENTS.

Dated, Brooklyn, N. Y., December 6, 1957.

[SEAL] Sidney R. Feuer,
Clerk.

By Thomas B. Costello,
Deputy Clerk.

APPENDIX B

In the Supreme Court of the United States

No. 79

UNITED STATES OF AMERICA

v.

THE F. & M. SCHAEFER BREWING COMPANY

CITY OF WASHINGTON,

DISTRICT OF COLUMBIA, *ss:*

Karl Schmeidler, being duly sworn, deposes and says:

1. I am an attorney in the Department of Justice and I am familiar with the proceedings in the case of *United States of America v. The F. & M. Schaefer Brewing Company* (No. 79, October Term, 1957).

2. On December 3, 1957, I searched the judgment docket for the Eastern District of New York. An entry appears in that docket for this proceeding in the District Court below as of May 24, 1955. This is the earliest and only entry in this case which I found in the judgment docket for the Eastern District of New York.

(s) KARL SCHMEIDLER.

Sworn to, before me, this 9th day of December 1957.

(s) W. E. HOUSE, *Notary Public.*

My commission expires January 31, 1960.

[SEAL]

U. S. GOVERNMENT PRINTING OFFICE 1957